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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. MARCUS MORRIS, Defendant and Appellant.	B289920 (Los Angeles County Super. Ct. No. NA091326)

APPEAL from judgment of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Affirmed.

R.E. Scott, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Steven E. Mercer, Deputy Attorney General, for Plaintiff and Respondent.

MEMORANDUM OPINION

Marcus Morris challenges his jury conviction for possession of cocaine base for sale in violation of Health and Safety Code section 11351.5. He contends the trial court erred when it denied his motion to suppress and admitted evidence of a prior uncharged offense. We affirm the judgment.

FACTS

From December 2011 to February 2012, the Long Beach Police Department surveilled Morris's apartment and observed activity consistent with drug transactions. In February 2012, a police informant purchased rock cocaine from Morris. On these facts, probable cause was found to support a warrant to search Morris's apartment and "any vehicles . . . associated with the residence or its occupants" for, among other things, cocaine, drug paraphernalia, and "any cell phones or computers, which officers are authorized to review and accept calls."

As they prepared to execute the search warrant, officers observed Morris leave his apartment and enter his car in the parking facility of the building. They stopped his car as it was exiting the driveway of his apartment complex. Morris stepped out of the car and was patted down; a cellphone was recovered from his person. The officers accessed Morris's cell phone, and found it contained text messages about drug transactions. The officers also searched his car, but found nothing of note. Upon questioning at the scene, Morris waived his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 and admitted he had drugs in his apartment.

DISCUSSION

A. The Trial Court Properly Denied the Motion to Suppress

Morris asserts the trial court erred in denying his motion to suppress because the officers lacked a reasonable basis to stop his vehicle, detain him, and retrieve information from his cell phone. He contends his statement to police that there were drugs in his house and the texts indicating drug transactions were the product of these illegal searches. We find no error.

Morris contends his detention was unlawful because the officer who made the stop testified that he was directed to stop Morris's car and he had no independent reasonable suspicion to do so. An officer's subjective state of mind, however, is irrelevant to determine whether a stop or detention is justified. (*People v. Conway* (1994) 25 Cal.App.4th 385, 388.) Here, the warrant provided a sufficient basis for the officers to stop the car. The warrant specifically provided that vehicles connected with Morris's apartment could be searched. At the time of the stop, Morris was about to drive the car away from his home and the officers were thus justified to stop Morris's car to search it before he could do so.

Moreover, the officers were justified in stopping and detaining Morris during the search under *Michigan v. Summers* (1981) 452 U.S. 692 (*Summers*). In *Summers,* officers were preparing to execute a search warrant when they encountered the defendant descending the front steps to leave the house to be searched. The *Summers* court held a search warrant supported by probable cause implicitly carried with it the limited authority to detain the occupants of the premises during the search. (*Id.* at p. 705.) The detention was justified to ensure officer safety, to

facilitate an orderly search, and to prevent the detainee's flight in the event incriminating evidence is found. (*Id.* at p. 702.)

Morris argues the rule in *Summers* does not apply because the justifying factors were not present in his case. According to Morris, he was driving away from the premises to be searched, thus he presented no threat to officer safety or of destruction of evidence. In addition, he claims that because he was placed in a police vehicle during the search, he could not interfere with the search in any way. We disagree. Morris overlooks the fact that the warrant included the authority to search his vehicle, which he was about to drive away. Morris had to be detained to effectuate its orderly search. It was further appropriate for the officers to pat down Morris to ensure their own safety. It was then that the cell phone was properly recovered as a subject of the search warrant.

Relying on *Bailey v. U.S.* (2013) 568 U.S. 186, 202 (*Bailey*), Morris additionally claims the detention was illegal because he was not in the immediate vicinity of the premises to be searched. Morris is wrong. We first note that *Bailey* was decided one year after the detention at issue and does not serve as a basis for exclusion, since the officers properly relied on the law in effect at the time. (*Illinois v. Krull* (1987) 480 U.S. 340, 356 [exclusionary rule not applied where officer reasonably relied on existing law that was later overturned].) As we have set forth, the officers could have reasonably relied upon the *Summers* rule to justify his detention. (See, e.g., *People v. Glaser* (1995) 11 Cal.4th 354, 360 [defendant reasonably detained in driveway while opening back gate, approximately 50 feet from house to be searched].)

In addition, Morris's assertion that he "had already left the scene" because he was in the driveway to his building does not

withstand analysis. In *Bailey,* the court noted that courts can consider "the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, the ease of reentry from the occupant's location, and other relevant factors" to determine whether he was in the immediate vicinity of the premises. (*Bailey, supra*, 568 U.S. at p. 201.) Here, Morris was in the driveway of his apartment complex. That is within the lawful limits of the premises and reentry to his apartment was easy from there.

We summarily reject Morris's contention that the search of his cellphone without a warrant was illegal under *Riley v. California* (2014) 573 U.S. 373, irrespective of the validity of the stop or detention. The warrant expressly authorized the seizure of cell phones, and allowed the officers to review information derived from the phone and receive calls from it.

B. The Trial Court Properly Admitted Evidence of the Prior Uncharged Offense

At trial, Sergeant Christopher Bolt testified as the People's narcotics expert. He explained how the items found during the search of Morris's apartment were often used to distribute and sell rock cocaine. He opined the text messages received on Morris's cellphone were indicative of narcotics transactions.

Bolt also arranged for an informant to purchase rock cocaine from Morris at a restaurant in 2005. After the sale was completed, police conducted a search of Morris's apartment. They retrieved rock cocaine and $1,800 in cash, but no drug paraphernalia indicating personal use. At this point, the trial court instructed the jury that this evidence was admitted solely to serve as a basis for his opinion that Morris's possession of the

cocaine was for sale. The trial court repeated its limiting instruction after the parties had rested.

Morris contends that Bolt's testimony about the prior conduct was not sufficiently similar to the present case to be admissible under Evidence Code section 1101, subdivision (b). He claims the only similarity between the two is that they involved the same drug, cocaine. He claims the two events are distinct in that the previous uncharged offense involved a completed sale, delivered to a restaurant, whereas in this case, the sales took place at Morris's apartment. We disagree.

The least degree of similarity between the uncharged act and the charged offense is required to prove the defendant probably harbored the same intent in each instance. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402.) Here, the officers searched the same location, Morris's apartment, in 2005 and 2012, and found similar items, including rock cocaine, cash in small denominations, but no drug use paraphernalia. Moreover, an informant was used to complete both drug transactions. Thus, we find the prior uncharged offense was sufficiently similar to be admissible under Evidence Code section 1101, subdivision (b).

Morris also asserts the record does not show the trial court conducted the required balancing analysis under Evidence Code section 352, and in any case, the evidence was too prejudicial, cumulative, and remote to be admitted. We are not persuaded.

Evidence Code section 352 gives the trial court the discretion to exclude evidence that is otherwise admissible if the court determines that the probative value of the evidence is "substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues,

or of misleading the jury." "For this purpose, 'prejudicial' is not synonymous with 'damaging,' but refers instead to evidence that ' "uniquely tends to evoke an emotional bias against defendant" ' without regard to its relevance on material issues. [Citations.]" (*People v. Kipp* (2001) 26 Cal.4th 1100, 1121.)

Contrary to Morris's assertion that "[n]o one even mentioned 352," the record shows the prosecutor argued, "I don't believe the similarity is the watch word under 352." Although the bulk of the argument about admissibility of this evidence involved discussions of Evidence Code section 1101, subdivision (b), it is nevertheless apparent the trial court understood the potential prejudice resulting from the evidence, as it decided to provide limiting instructions on its consideration. In any case, " ' "the trial judge need not *expressly* weigh prejudice against probative value–or even *expressly* state that he has done so." ' " (*People v. Crittenden* (1994) 9 Cal.4th 83, 135.)

Moreover, we reject the contention that Bolt's testimony about one non-violent drug transaction occurring in 2005 was cumulative or remote in time. Neither do we view the evidence to evoke an emotional bias against Morris. The trial court did not abuse its discretion to admit Bolt's testimony of the prior uncharged offense. (*People v. Linkenauger* (1995) 32 Cal.App.4th 1603, 1610.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J. STRATTON, J.